

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.301.146 modifications to the)	PROPOSED AMENDMENT,
international building code applicable)	ADOPTION, AND REPEAL
to department and local government)	
code enforcement, the adoption of)	
NEW RULE I incorporation by)	
reference of international swimming)	
pool and spa code, and the repeal of)	
ARM 24.301.801 adoption by)	
reference of ARM 37.111.1115)	
review of plans)	

TO: All Concerned Persons

1. On November 5, 2015, at 2:00 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Building Codes Bureau no later than 5:00 p.m., on October 30, 2015, to advise us of the nature of the accommodation that you need. Please contact David White, Building Codes Bureau, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2009; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or dlibsdcb@mt.gov (bureau's e-mail).

3. GENERAL REASONABLE NECESSITY: The department determined it is reasonably necessary to propose several rule changes to adopt a new publication of the nationally recognized international code council building codes International Swimming Pool and Spa Code (ISPSC) 2015. Amendments to ARM 24.301.146 and the repeal of ARM 24.301.801 will facilitate the adoption and clarify the standards for pool and spa construction so that designers, builders, and owners of such facilities will have a clear understanding of the building regulations. The department undertook an exhaustive evaluation of this code adoption and worked with stakeholders to propose the appropriate modifications to the model code and arrive at a balanced cost/benefit set of safe pool regulations tailored to Montana's unique population density and jurisdictional demographic.

The related operational practice conducted by the Department of Public Health and Human Services is expected to continue after the changes are effective.

4. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (11) remain the same.

(12) Delete Subsection 903.2.8 and replace with the following:

"1. An approved automatic sprinkler system installed in accordance with Section 903.3 shall be provided in all Group R buildings meeting any of the following criteria:

"a. 9 or more transient guests or ~~8~~ 5 or more transient guestrooms;

"b. 9 or more occupants in other than dwelling units;

"c. 5 or more dwelling units; or

"d. more than 2 stories.

"2. In lieu of the above required automatic sprinkler system in buildings not more than three stories above the lowest level of exit discharge, each transient guestroom may be provided with at least one door leading directly to an exterior exit access that leads directly to approved exits.

"3. "Transient guest" for the purpose of this subsection shall mean an occupant who is primarily transient in nature, staying at one location for 30 days or less."

"4. "The requirements for automatic sprinkler systems for R-4 occupancies are found in ARM 24.301.146."

(13) through (19) remain the same.

(20) Delete Section 3109 in its entirety and replace with the International Swimming Pool and Spa Code, 2015 edition as adopted in [NEW RULE I].

(21) through (35) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205, MCA

REASON: It is reasonably necessary to amend (12) and reduce the number of transient guestrooms required for an approved automatic sprinkler system. The department notes this reduction follows a growing industry trend specific to Group R buildings such as hotels, motels, and inns. It is anticipated that the number of guestrooms will be further reduced over several rule amendments, until relying solely on the number of transient guests and not a number of guestrooms.

The department is amending (20) to implement the department's adoption of the ISPSC in NEW RULE I of this notice.

5. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF INTERNATIONAL SWIMMING POOL AND SPA CODE (ISPSC) (1) The department adopts and

incorporates by reference the International Swimming Pool and Spa Code, 2015 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) Chapters 7 through 10, inclusive, are deleted in their entirety.

(2) As specified in ARM 24.301.146(20), the department has deleted Section 3109 Swimming Pool Enclosures and Safety Devices from the International Building Code and replaced that section with the International Swimming Pool and Spa Code (ISPSC) as adopted by reference in (1). Cities, counties, and towns that have adopted the International Building Code in connection with their certification to enforce building codes will utilize the applicable sections of the ISPSC to regulate swimming pool and spa construction.

(3) As specified in 76-2-412, MCA, the ISPSC provisions, which are not applicable to residential occupancies, may not be applied to a community residential facility serving eight or fewer persons, or to a day-care home serving 12 or fewer children.

(4) The purpose of this code is to establish minimum standards to provide a reasonable level of safety and protection of health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, and location of public swimming pools, spas, and aquatic recreation facilities.

(5) No swimming pool or spa permit shall be issued for a building or structure, under the jurisdiction of the department, until the building permit has first been issued for that building or structure.

(6) The ISPSC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for swimming pool and spa installations. A copy of the ISPSC may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-203, MCA

IMP: 50-53-103, 50-60-104, 50-60-202, 50-60-203, 76-2-412, MCA

REASON: The department is proposing (1) pursuant to 50-60-202, MCA, as the department is the sole agency to promulgate building regulations, and per 50-60-203, MCA, must do so by rule. This new rule is necessary to adopt an international swimming pool and spa code pursuant to 50-60-202, MCA, and in alignment with the repeal of ARM 24.301.801.

It is reasonably necessary to clarify in (1)(a) that chapters 7-10 are deleted in their entirety because 50-60-102(1)(a), MCA, provides that the state building code, as defined in 50-60-203(3), MCA, does not apply since the department lacks jurisdiction over privately owned residential structures of less than five dwelling units.

The department is proposing (2) to align with amendments proposed to ARM 24.301.146(20). This allows cities, counties, and towns that have adopted the International Building Code in connection with their certification to enforce building codes as they will utilize the applicable sections of the ISPSC to regulate swimming pool and spa construction in those certified jurisdictions.

It is necessary to clarify in (3) that the ISPSC provisions are not applicable to residential occupancies and may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children

because of the family day-care home, group day-care home, and day-care home considerations in 76-2-412, MCA.

The department is clearly delineating the purpose of the ISPSC code in (4).

The department is adopting (5) to clarify that the department will not issue a swimming pool or spa permit for a building or structure until after the building permit is issued for that building or structure, because the pool or spa permit is inclusive of the building permit.

Language in (6) is necessary to inform citizens and stakeholders of the purpose of this code and how to obtain copies of the ISPSC.

6. The rule proposed to be repealed is as follows:

24.301.801 ADOPTION BY REFERENCE OF ARM 37.111.1115--REVIEW OF PLANS at ARM page 24-32455.

AUTH: 50-60-203, MCA

IMP: 50-53-103, 50-60-104, MCA

REASON: The department determined it is reasonably necessary to repeal this rule to align with the adoption of a new swimming pool and spa construction code pursuant to 50-60-202, MCA, in NEW RULE I of this notice.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or e-mail to dlibsdbcb@mt.gov and must be received no later than 5:00 p.m., November 13, 2015.

8. An electronic copy of this notice of public hearing is available at www.buildingcodes.mt.gov (department and bureau's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all department or bureau administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or

standard mail is preferred. Such written request may be sent or delivered to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dlibsdbcb@mt.gov; or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.301.146, the adoption of NEW RULE I, and the repeal of ARM 24.301.801 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dlibsdbcb@mt.gov.

12. Colleen White, attorney, has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 5, 2015